Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

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D.C. OFFICE OF ZONING
2002 DEC -3 AM 9:34

Jerrily Kress. FAIA
Director, Office of Zoning
441 4th St. NW
Suite 210 South
Washington, DC 2001

Dear Ms. Kress:

I enclose a copy of a letter that I sent last spring, at your suggestion, to Karen Edwards, General Counsel of the Department of Consumer and Regulatory Affairs, inquiring as to whether St. Patrick's School was complying with a BZA cap on the size of faculty and staff.

I have never received a definitive reply from Ms. Edwards. Since the original letter, of course, your office has established a new post of compliance with BZA orders. I thought you might be interested in the letter as an example of the past difficulty in getting DCRA to enforce BZA conditions and also as perhaps a task for your new office of compliance.

Sincerely yours,

John W. Finney

Chair, ANC3D

BZA
Case No. 16852
Exhibit No. 348

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.348

ANC3D letterhead **June**

Karen Edwards
General Counsel
The Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE—Suite 9400
Washington, DC 20002

Dear Ms. Edwards:

At the suggestion of the Office of Zoning, ANC3D writes to you to register a formal complaint that St. Patrick's School on Whitehaven Parkway is exceeding the cap on size of faculty and staff imposed on the school by the Board of Zoning Adjustment.

In an order issued by the BZA, dated October 17, 1990, a cap of 60 was placed on the size of faculty and staff of the school. That cap still prevails, never changed or altered in subsequent years by the BZA.

In testimony in recent weeks by school officials and representatives of District agencies before the BZA, it has become apparent that the size of faculty and staff at St. Patrick's currently exceeds 80 and may be as high as 100.

For example, under cross-examination at a BZA hearing on May 21, Peter Barrett, headmaster of St. Patrick's, stated, according to my notes, that the school had 50 full time faculty members, 15 part-time faculty members, 21 administrative staff members including full and part-time and four maintenance staff members. From those numbers, Mr. Barrett extrapolated that St. Patrick's had a "full time equivalent" of 84 persons on its faculty and staff. By his own calculations, therefore, St. Patrick's is exceeding the cap of 60 for faculty and staff imposed by the BZA.

Other testimony submitted to the BZA in recent weeks suggests the number of faculty and staff totals 100. For example, in a traffic analysis prepared for the school and submitted to BZA, Wells & Associates, in a report dated April 2, 2002, states on page 6, "There are presently 80 full-time and 20 part-time faculty and staff." That report undoubtedly drew upon figures supplied by the school. Similarly, in a report to the BZA dated April 13, 2002, Kenneth Laden, Associate Director for Planning of the D.C. Department of Transportation, stated "St. Patrick's currently employs a total of 100 full and part-time teachers at the Whitehaven Parkway School."

In attempting to avoid the obvious conclusion that it has violated the cap on faculty and staff, St. Patrick's has resorted to what we believe is legal legerdemain. In

the BZA hearing on May 21, Allison Prince, the lawyer representing St. Patrick's, argued rather vociferously that there was no longer a BZA cap on the size of the faculty at the school , just on the size of the staff. Her argument was that in its 1990 Order #15374, the BZA talked only about a cap on "Staff," thereby excluding the faculty from any cap except that imposed by availability of parking spaces. The argument is a specious one, avoiding the regulatory history of "caps" imposed on St. Patrick's in the past 19 years. As elaborated upon in the attached memo, starting in 1983, BZA has used the term "faculty and staff" in establishing caps for the school. In 1983, BZA Order # 14009 stated that "The total number of 'faculty and staff' ...shall not exceed 48." In 1990, when the school was seeking another expansion, the school application stated that, "The number of 'faculty and staff' will not exceed 60." That statement was reinforced in oral testimony by Ms. Prince who said, "St. Patrick's is also seeking an increase to an absolute maximum 'staff and faculty' of 60."

In its order of Oct. 17, 1990 granting a special exception to the school, there are several references to "faculty and staff" and "staff" in a way that suggests BZA was using the two terms interchangeably. So it is understandable that in the final conditions of its order, the BZA should state that the number of the 'staff' shall not exceed 60, while it is clear from the record that its intent was that number should include both faculty and staff.

To argue otherwise, as does Ms. Prince on behalf of the school, is to ignore the intent of the applications and the oral testimony of the school that the cap should apply to both faculty and staff. We believe that the BZA was using the term "staff" in its broad context to include faculty, and therefore that St. Patrick's currently is exceeding the cap of 60 on faculty and staff imposed in the 1990 order.

We request that you examine whether St. Patrick's is violating a condition laid down by the BZA in establishing the maximum permissible size of its faculty and staff and report back to ANC3D on your findings.

Sincerely yours,

John W. Finney
Chair, ANC3D

Cc:
Jerrily Kress, FAIA
Director, Office of Zoning
441 4th St. NW
Suite 210 South
Washington, DC 20001